

A.C. 44016
NNH-CV17-6072389-S

APPELLATE COURT

ELIYAHU MIRLIS

v.

YESHIVA OF NEW HAVEN, INC.
FKA THE GAN, INC. FKA THE GAN
SCHOOL, TIKVAH HIGH SCHOOL AND
YESHIVA OF NEW HAVEN, INC.

JULY 23, 2020

MOTION TO TERMINATE STAY

Pursuant to Conn. Gen. Stat. § 47a-35(b) and Practice Book § 66-11(d) and (e), the plaintiff/appellee, Eliyahu Mirlis ("Plaintiff") respectfully requests that the trial court (Hon. Claudia A. Biao) terminate the stay in the above-captioned appeal filed by the defendant/appellant, Yeshiva of New Haven, Inc. f/k/a the Gan, Inc. f/k/a the Gan School, Tikvah High School and Yeshiva of New Haven, Inc. ("Defendant"), because this appeal was filed solely for the purpose of delay and/or the due administration of justice requires termination of the stay. In support of his Motion, Plaintiff states as follows:

I. BRIEF HISTORY OF THE CASE

A. The Underlying Judgment and Plaintiff's Collection Efforts

In this foreclosure action, Plaintiff seeks to enforce the judgment (the "Judgment") that he obtained against Daniel Greer ("D. Greer") and Defendant in the action captioned Eliyahu Mirlis v. Daniel Greer et al., 3:16-cv-00678 (MPS) (the "Underlying Action"), by foreclosing on the real property situated in the City of New Haven, County of New Haven, and State of Connecticut known as 765 Elm Street, New Haven, Connecticut (the "Property"), the building located on which had been used as a school by Defendant. In the Underlying Action, the Plaintiff alleged that D. Greer, the then-(and current) president and a director of Defendant,

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had sexually abused, exploited and assaulted him for a period of some three years while he was a minor and a boarding student at Defendant's school. On or about May 18, 2017, the jury in the Underlying Action returned a verdict in Plaintiff's favor and awarded him \$15,000,000 in compensatory damages. The jury also found that Plaintiff was entitled to punitive damages from both D. Greer and the Yeshiva. On June 6, 2017, the Court in the Underlying Action entered a judgment against D. Greer and Defendant in the total amount of \$21,749,041.10, including \$5,000,000.00 in punitive damages and \$1,749,041.10 in offer-of-compromise interest. The Judgment was affirmed on appeal. See Mirlis v. Greer, 17-4023-cv, Doc. No. 158-1 (2d. Cir. Mar. 3, 2020).

The Judgment remains almost completely unsatisfied, with any minimal payments made having resulted from Plaintiff's collection efforts. There have been **no** voluntary payments made by D. Greer or Defendant on the Judgment. Payments toward the Judgment total \$277,124.51, comprising (1) \$67,500.00 from the settlement of the foreclosure commenced by Plaintiff against Defendant and D. Greer concerning their residence (Stipulated Order and Settlement Agreement, *Mirlis v. Greer*, NNH-CV17-6072481-S, Doc. No. 119; Order Accepting Stipulated Order and Settlement Agreement, *Mirlis v. Greer*, NNH-CV17-6072481-S, Doc. No. 119.10); two parcels of vacant land owned by the Yeshiva valued by the court together at \$203,000.00, which were taken by strict foreclosure (Notice of Judgment of Strict Foreclosure, *Mirlis v. Yeshiva of New Haven, Inc.*, NNH-CV17-6072391-S, Doc. No. 113; Notice of Judgment of Strict Foreclosure, *Mirlis v. Yeshiva of New Haven, Inc.*, NNH-CV17-6072390-S, Doc. No. 113); and \$6,642.51 from financial institution

executions. Thus, including statutory post-judgment interest at the applicable rate of 1.16%,¹ the total of the unpaid Judgment is \$22,257,795.72 as of July 17, 2020.

B. Defendant's and D. Greer's Obvious and Ongoing Delays

Plaintiff has collected only a small fraction of the Judgment due to the continued and illegal efforts of Defendant and D. Greer to frustrate Plaintiff's collection. For example, Plaintiff commenced an action against D. Greer's wife, Sarah Greer ("S. Greer"), to recover fraudulent transfers that she received from both D. Greer and Defendant in excess of \$500,000.00, captioned Mirlis v. Greer, 3:18-cv-02082 (MPS) (the "S. Greer Action"). In granting Plaintiff's Application for Prejudgment Remedy, Magistrate Judge Robert A. Richardson found, *inter alia*, that there was probable cause that Plaintiff could prove that the transfer of funds from a joint account owned by D. Greer and S. Greer, to an out-of-state account solely in S. Greer's name was an intentional fraudulent transfer by D. Greer. (Ruling on Plaintiff's Application for Prejudgment Remedy and Motion for Disclosure of Assets, S. Greer Action, Doc. No. 61, (the "PJR Ruling"), pp.12-13, attached hereto as Exhibit A.) Judge Michael P. Shea subsequently overruled S. Greer's objection to the PJR Ruling. (S. Greer Action, Ruling on defendant's Appeal and Objection to Magistrate Judge Richardson's Ruling on Plaintiff's Application for Prejudgment Remedy and Motion for Disclosure, Doc. No. 73 (the "PJR Objection Ruling"), attached hereto as Exhibit B.) Judge Shea found, *inter alia*, that Plaintiff introduced evidence, which Judge Richardson considered, evidencing "several badges of fraud" as to D. Greer. (Id., p.2.) Judge Shea also found that "it is apparent from Mr. Greer's paltry contribution towards the judgment in the underlying case and the minimal liquid assets with which he has left himself, that the transfers of liquid assets described in the

¹ See 28 U.S.C. § 1961 (post-judgment interest).

Ruling have rendered him unable to contribute further to the judgment against him in the underlying case." (Id.)²

Additionally, Plaintiff has commenced an action against five nonprofit entities controlled by D. Greer seeking to pierce the corporate veil and enforce the Judgment against those entities, captioned Mirlis v. Edgewood Elm Housing, Inc. et al., 3:19-cv-00700 (CSH) (the "Veil Piercing Action"). The gravamen of the Veil Piercing Action is that D. Greer totally dominated and controlled Defendant and the other five entities such that they were operated as a single enterprise (the "Enterprise") with no separate identities. D. Greer used the Enterprise to hold and acquire assets so that he could incrementally pay money to himself, S. Greer, and Defendant without exposing funds to Plaintiff for collection. (See Complaint, Veil Piercing Action, attached hereto as Exhibit C.) The purpose and result of this scheme were to shield the Enterprise from the legitimate collection by creditors, including Plaintiff.³

Defendant and D. Greer's delay tactics were most recently identified by Judge Shea in an order denying D. Greer's motion for protective order to preclude further post-judgment discovery and noting that certain of D. Greer's arguments "border on the frivolous:"

The Motion for Protective Order (ECF No. [373]) is DENIED because it does not comply with the undersigned's procedures regarding discovery disputes and because it does not show good cause why the broad order requested should be granted. For example, it does not suggest that defense counsel has made any effort to contact the defendant's Probation Officer or the Bail Commissioner to request that the defendant be allowed to travel to the office of defense counsel in New Haven for purposes of the deposition -- a possibility contemplated by Judge Alander's order. ECF No. 373 at 17 ("House arrest except that the defendant may, with prior approval by the probation officer or bail commissioner, travel to his attorney's office."). Should such a request be made -- accurately conveying the circumstances and this Court's strong preference that discovery

² S. Greer has since been defaulted as to liability in the S. Greer Action by the Court based upon her continued, willful disregard for the Court's discovery orders.

³ The defendants in the Veil Piercing Action filed a motion to dismiss, which Plaintiff opposed and which is now under consideration by the Court.

proceed if at all possible consistent with Judge Alander's order -- and should it be denied, the defendant may raise the issue with the Court again, using the Court's designated procedure for discovery disputes. Finally, the court notes that any overlap between permissible discovery (as opposed to actual discovery) in this action and the "veil piercing action" is not a basis for a protective order; and the argument that "Greer has previously been deposed concerning his assets and [thus that] a further deposition is not necessary," ECF No. 373 at 4, borders on the frivolous under the circumstances of this case, where defendant Greer refused to answer questions at the last deposition and then unsuccessfully appealed this Court's order requiring that he do so. (ECF Nos. 338, 344 & 367.)

(Underlying Action, Doc. No. 374.) The appeal of the foreclosure judgment entered in this case borders on the frivolous as well.

C. Background to This Foreclosure Action

Plaintiff commenced this action to foreclose a judgment lien (the "Judgment Lien") based on the Judgment that he recorded on Defendant's interest in the Property. On November 8, 2017, Plaintiff filed his Motion for Summary Judgment and supporting memorandum (Doc. Nos. 104, 105), which was granted as to liability by the Court on January 16, 2018 (Doc. No. 104.10). Defendant did not object to the Motion for Summary Judgment, but rather, filed a the Motion for Discharge of Judgment Lien on Substitution of Bond (Doc. No. 106) (the "Motion to Substitute") on January 16, 2018, seeking to have the Court substitute a "cash bond for the Property in the amount of the fair market value of the Property[.]" (Motion to Substitute, p.3.) Defendant never sought to prosecute the Motion to Substitute until a Motion for Judgment was filed. In addition, Defendant refused Plaintiff's appraiser access to the Property, which resulted in Plaintiff filing a motion to access the Property for the purpose of conducting an appraisal, which was granted on April 8, 2019 (Doc. Nos. 108.00, 108.10).

On June 5, 2019, Plaintiff filed his Motion for Judgment of Strict Foreclosure (Doc. No. 113) (the "Motion for Judgment") and an appraisal report of the Property. In response, Defendant filed Defendant's (1) Objection to Motion for Judgment of Strict Foreclosure, (2)

Motion to Discharge Judgment Lien and Substitute Bond, and (3) Motion to Continue hearing on Motion for Judgment of Strict Foreclosure (Doc. No. 115) (the "Foreclosure Objection"), seeking, *inter alia*, to have the Motion for Judgment denied because of a dispute as to the value of the Property and on account of the Motion to Substitute. After being continued twice at the request of Defendant and over Plaintiff's objections, an evidentiary hearing regarding the Motion for Judgment was held before the Court on October 28, 2019, and December 9, 2019. Each party called one witness, their respective expert appraisers, and submitted one exhibit, the reports of those appraisers. Plaintiff and Defendant submitted their post-hearing briefs on January 27, 2020 (Doc. Nos. 131, 132).

II. SPECIFIC FACTS UPON WHICH APPELLEES RELY⁴

On February 24, 2020, the Court issued its Memorandum of Decision: Hearing on Valuation (Doc. No. 133.00) (the "Valuation Decision"). In the Valuation Decision, the Court analyzed the evidence submitted by both parties – the testimony of their expert appraisers and the appraisal reports. The Court noted that the disagreements between the appraisers as to the value of the Property centered around the comparable sales considered as well as the treatment of certain environmental concerns. (Valuation Decision, pp. 5-6.) Plaintiff's appraiser valued the Property at \$960,000.00 and Defendant's appraiser valued the Property at \$390,000.00. (*Id.*, pp. 3-4.) The Court further found that "[b]oth appraisals and appraisers' testimony are taken into account and are relevant to determining the fair market value of the property." (*Id.*, p.6.) In considering the facts and the law, the Court found that the fair market

⁴ Plaintiff also incorporates the background from the previous section as a basis for the relief requested.

value of the Property was \$620,000.00. The Court also held that Defendant could discharge the Judgment Lien by depositing a cash only bond with the Court in the Amount of \$620,000.

Defendant never deposited the cash bond, and on March 9, 2020, the Court entered a judgment of strict foreclosure (Doc. No. 137) (the "Foreclosure Judgment") in which the Court found, *inter alia*, that the debt was \$22,167,939.41 and the value of the Property was \$620,000.00. The Court set a law day of June 1, 2020. This appeal followed.⁵

Defendant raises three issues for appeal:

1. Whether the trial court erred by finding the value of the property known as 765 Elm Street, New Haven, Connecticut (the "Property"), to be \$620,000.00, as opposed to \$390,000.00 as proposed by YNH.
2. Whether the trial court erred by crediting the testimony of Patrick Craffey, even though he failed to consider (a) comparable properties and (b) environmental distress to the Property.
3. Whether the trial court erred by entering a judgment of strict foreclosure.

III. LEGAL GROUNDS UPON WHICH APPELLEE RELIES

The trial court may terminate the stay of execution in a summary process action where, *inter alia*, "the appeal was taken solely for the purpose of delay. . . ." Conn. Gen. Stat. § 47a-35(b). Practice Book § 61-11(d) further provides that trial court may order the stay to be terminated if the appeal is only filed for delay or "due administration of justice so requires".

[S]tays during foreclosures are guided by the familiar "balancing of the equities" test, which requires evaluation of the relative harms and includes consideration of factors such as (1) the likelihood that the appellant will prevail; (2) the irreparability of the injury to be suffered from immediate implementation of the

⁵ Defendant filed a Notice of Appeal on March 9, 2020, and an Amended Notice of Appeal on March 19, 2020.

judgment; (3) the effect of a stay upon other parties to the proceeding; and (4) the public interest involved.

CitiMortgage, Inc. v. McLaughlin, No. HHDCV116020540S, 2014 Conn. Super. LEXIS 156, at *2-3 (Super. Ct. Jan. 24, 2014) (citing cases).

It is clear in this case that the appeal was only taken for the purposes of delay and that the due administration of justice requires that the stay be terminated. First, it is unlikely that Defendant will prevail in its appeal.

The standard of review of a judgment of foreclosure by sale or by strict foreclosure is whether the trial court abused its discretion. . . . A foreclosure action is an equitable proceeding. . . . The determination of what equity requires is a matter for the discretion of the trial court. . . . In determining whether the trial court has abused its discretion, we must make every reasonable presumption in favor of the correctness of its action. . . . Our review of a trial court's exercise of the legal discretion vested in it is limited to the questions of whether the trial court correctly applied the law and could reasonably have reached the conclusion that it did." . . . We will disturb the trial court's determination of valuation, therefore, only when it appears on the record before us that the court misapplied or overlooked, or gave a wrong or improper effect to, any test or consideration which it was [its] duty to regard."

Webster Tr. v. Mardie Lane Homes, LLC, 93 Conn. App. 401, 405-07 (2006) (citations omitted). It is very unlikely that Defendant will prevail given this highly deferential standard of review. Indeed, in the Valuation Decision the Court did exactly what the law requires: set forth the facts that it considered from the parties' evidence—i.e., the appraisal reports and testimony of the expert appraisers, weighed the opinions of the experts, and came to a conclusion as to the value of the Property. (Valuation Decision, pp. 6-7 (citing cases).). Thus, the appeal is baseless, frivolous, undertaken solely for delay, and Defendant is not entitled to the benefit of the appellate stay.

Defendant also frivolously challenges the Court's determination as to the credibility of Plaintiff's expert.

The determination of the credibility of expert witnesses and the weight to be accorded their testimony is within the province of the trier of facts, who is *privileged* to adopt whatever testimony he reasonably believes to be credible. . . . When confronted with conflicting evidence as to valuation the trier may properly conclude that under all the circumstances a compromise figure most accurately reflects fair market value.

Bank of Se. Conn. v. Nazarko Realty Grp., 49 Conn. App. 452, 456 (1998) (citation omitted) (emphasis in original). The Court was free to credit or discredit the testimony of either expert and afford such testimony the appropriate weight it deserved. Here, the Court reached a compromise figure between the valuations of the two expert witnesses in order to arrive at the fair market value, which it may do as a matter of law.

As to the second factor, Defendant will not suffer an irreparable injury if the Foreclosure Judgment is, as it should be, immediately implemented. There is no dispute that the value of the Property is at least \$21,000,000.00 less than the \$22,167,939.41 Judgment awarded to Plaintiff to make him whole for the immense suffering caused by D. Greer and his enablers. Indeed, whether the value of the Property was found to be \$390,000.00, \$960,000.00, or any number in between, there can be no dispute that the foreclosure of the Property must proceed by strict foreclosure, rather than by foreclosure by sale.

Likewise, if Defendant truly intended and had the means to post a cash bond it would have made some effort to do so in the more than two-years since it filed the Motion to Substitute. Moreover, and significantly, Defendant has never produced any evidence that it has the ability to post a cash bond of any amount, let alone \$390,000. Indeed, if Defendant had \$390,000 in cash or other liquid assets Plaintiff would have long-ago executed on those assets to satisfy a small portion of the Judgment.

Defendant's financial disclosures also consistently support the indisputable conclusion that it lacks the cash or other liquid assets to post a bond to substitute for the Plaintiff's judgment lien. In fact, Defendant stipulated that as of July 22, 2020, the balance of all funds in any account belonging to it is less than \$100,000.00. See Stipulation Re: Motion to Terminate Stay (**Exhibit D**). Thus, it seems impossible that Defendant could post a bond for even \$390,000.00, the value according to its own appraiser. In reality, as evidenced by Defendant's continued efforts to frustrate Plaintiff's attempts to enforce the Judgment, Defendant challenges the value of the Property in order to manufacture a frivolous claim that it could raise on appeal. Certainly, holding Defendant to task and preventing it from further delaying collection of the Judgment is not the type of irreparable harm that would preclude the Court from terminating the stay

The effect of the stay on Plaintiff, on the other hand, is profound. Plaintiff was first sexually assaulted by D. Greer, who dominates and controls Defendant, in 2002 when he was a minor. When Plaintiff was finally in a mental and emotional position where he was able to seek redress from Defendant and D. Greer (including enduring discovery, a public trial, and cross-examination by opposing counsel) and obtained the Judgment, Defendant and D. Greer sought (and continue) to do anything they can to thwart Plaintiff's efforts to collect compensation for the terrible wrongs visited upon him. This conduct includes unwarranted delay tactics, such as multiple appeals and challenging legitimate discovery, as well as unlawful behavior as alleged (and in the case of S. Greer established) in the S. Greer Action and the Veil Piercing Action.

Last, consideration of the public interest counsels for terminating the stay. There is a public interest "in not hindering the efforts of creditors to enforce and collect their

judgments." Crothers v. Pilgrim Mortg. Corp., 95 Civ. 4681 (SAS), 1997 U.S. Dist. LEXIS 11721, at *7 (S.D.N.Y. Aug. 7, 1997); see also Brabson v. Friendship House of W. N.Y., Inc., No. 94-CV-0834E(F), 2000 U.S. Dist. LEXIS 13453, at *5 (W.D.N.Y. Sep. 5, 2000) ("... the public has an interest in seeing that a plaintiff is allowed to enforce a judgment without facing an inordinately long delay."). That should be especially the case in tort actions and the "fundamental purposes of the tort compensation system of deterring wrongful conduct and shifting the blame to the party who is in the best position to prevent the injury." Cefaratti v. Aranow, 321 Conn. 593, 622 (2016). Here, the wrongful conduct and the injury are particularly heinous – the sexual assault of a minor. There is a strong public interest in making sure that conduct as proven in the Underlying Action is prevented, rather than rewarding the liable party by allowing it to delay and frustrate collection ad nauseam.

The stay in this matter should be terminated. It is clear that it was only taken for the purposes of delay, and Defendant is exceedingly unlikely to succeed on appeal. In addition, given the nature of the wrongs in this action and Defendant's sustained wrongful efforts to avoid collection of the Judgment, the due administration of justice is in no way served by the continuation of the stay. Therefore, the Court should terminate the appellate stay in this matter.

IV. CONCLUSION

Based upon the foregoing, Plaintiff respectfully requests that the Court terminate the appellate stay in this matter as this appeal was only taken for the purpose of delay and the due administration of justice requires termination, and grant such other and further relief as justice requires.

PLAINTIFF/APPELLEE
ELIYAHU MIRLIS

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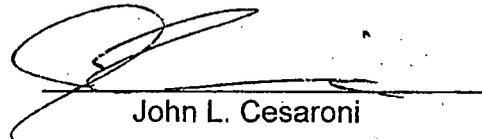
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JULY 23, 2020

CERTIFICATE

I hereby certify that the foregoing Motion to Terminate Stay complies with Practice Book § 62-7, that a copy of the foregoing and all exhibits thereto were emailed to counsel of record listed below on July 23, 2020, that this document contains no personally identifiable information or such information has been redacted, and this document complies with the applicable rules of appellate procedure.

By:



John L. Cesaroni

EXHIBIT A

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIYAHU MIRLIS, :
 :
 plaintiff, :
 :
 v. : CASE NO. 3:18cv02082 (MPS)
 :
 SARAH GREER, :
 :
 defendant. :

RULING ON PLAINTIFF'S APPLICATION FOR PREJUDGMENT REMEDY AND
MOTION FOR DISCLOSURE

The plaintiff, Eliyahu Mirlis, filed this action against the defendant, Sarah Greer, to recover funds that were allegedly fraudulently transferred to the defendant. Prior to this action, the plaintiff obtained a judgment against the defendant's husband, Daniel Greer, in Eliyahu Mirlis v. Daniel Greer, 3:16-cv-00678 (MPS) ("The Underlying Action"). The plaintiff alleges that certain funds were fraudulently conveyed to prevent the plaintiff from collecting the judgment and has filed a motion for a prejudgment remedy and a motion for disclosure of defendant's property.

After considering the briefs and materials submitted by the parties,¹ plaintiff's motion for a prejudgment remedy is GRANTED,

¹ A hearing was held on July 11, 2019, but no witnesses were called and both parties agreed that the court could determine the matter solely on the papers.

in part, and plaintiff's motion for disclosure of property is GRANTED.

STANDARD

Rule 64(a) of the Federal Rules of Civil Procedure provides that in a federal action "every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment." Fed. R. Civ. P. 64(a); see also Novafund Advisors, LLC v. Capitala Group, LLC, No. 3:18CV1023(MPS), 2019 WL 1438179, at *1 (D. Conn. Mar. 31, 2019). Thus, this Court must apply Connecticut's prejudgment remedy statute, Conn. Gen. Stat. § 52-278a, et seq. Under that statute, a prejudgment remedy is available if the court finds "there is probable cause that a judgment in the amount of the prejudgment remedy sought, or in an amount greater than the amount of the prejudgment remedy sought, taking into account any defenses, counterclaims or set-offs, will be rendered in favor of the plaintiff. . . ." Conn. Gen. Stat. § 52-278d(a)(1).

At this stage, the "trial court's function is to determine whether there is probable cause to believe that a judgment will be rendered in favor of the plaintiff in a trial on the merits." Roberts v. Triplanet Partners, LLC, 950 F. Supp. 2d. 418, 421 (D. Conn. 2013) (quoting Balzer v. Millward, No. 3:10CV1740(SRU) (HBF), 2011 WL 1547211, at *1 (D. Conn. Apr. 21, 2011) (internal

quotation marks omitted). The probable cause standard is modest, and "not as demanding as proof by a fair preponderance of the evidence." TES Franchising LLC. v. Feldman, 286 Conn. 132, 137 (2008). "The legal idea of probable cause is a bona fide belief in the existence of facts essential under the law for the action and such as would warrant a man of ordinary caution, prudence, and judgment, under the circumstances, in entertaining it." *Id.* "When a plaintiff is seeking a prejudgment remedy based on a fraudulent transfer, the plaintiff must establish probable cause to believe that it can prove by clear and convincing evidence that the transfer was fraudulent." Cendant Corporation v. Shelton, 473 F. Supp. 2d 307, 312 (D. Conn. 2007) (citation and internal quotation marks omitted).

A probable cause determination requires the court to determine "the validity of the plaintiff's claim and the amount of the remedy sought." TES Franchising, LLC, 286 Conn. at 145-466 (2008); Conn. Gen. Stat. § 52-278(d)(a). In determining the amount of the remedy, "[d]amages need not be established with mathematical precision, but must be based on evidence yielding a fair and reasonable estimate." Triplanet Partners, 950 F. Supp. 2d at 421 (citation and internal quotation marks omitted).

For a motion to disclose property, "the court may, on motion of a party, order an appearing defendant to disclose property in which he has an interest or debts owing to him

sufficient to satisfy a prejudgment remedy." Conn. Gen. Stat. § 52-278(n)(a) (2019). "Generally, under Connecticut law, a disclosure of assets is ordered if a prejudgment remedy is ordered. Novafund Advisors, LLC, No. 3:18CV1023(MPS), at *2 (quoting Wachovia Bank, N.A. v. Cummings, No. 309CV957(SRU), 2010 WL 466160, at *9 (D. Conn. Feb. 8, 2010)).

DISCUSSION

In connection with this matter, the parties submitted a joint stipulation of facts which the Court adopts. The Court will supplement with additional facts as needed.

Plaintiff alleges that three different types of fraudulent transfers were made by the defendant to help her husband avoid paying the judgment. First, that defendant transferred \$238,000 by way of three different checks² from the defendant's joint accounts with her husband to an account outside of Connecticut that was solely in the defendant's name. Second, that the defendant and her husband purposefully used her husband's money to pay for expenses and reduce the number of assets in her husband's name. Third, that the defendant and her husband are officers and directors of intertwined non-profit organizations,

² The jury returned its verdict against defendant's husband on May 18, 2017. The first check was drafted shortly before the verdict, on May 12, 2017, for \$5,000.00. The second check was drafted on June 16, 2017 in the amount of \$13,000.00. The final check, a bank check from June 5, 2017, was made payable to the defendant in the amount of \$220,000.00.

from which the defendant receives large retirement benefits but her husband does not, such that the majority of the assets are in the defendant's name and not accessible by the plaintiff.

I. The Fraudulent Transfer Claim

Under the Connecticut Uniform Fraudulent Transfer Act ("CUFTA"), a transfer made by a debtor is fraudulent as to a creditor if the creditor's claim arose before the transfer was made and the transfer was made with "actual intent to hinder, delay or defraud any creditor of the debtor." Conn. Gen. Stat. § 52-552e(a)(1). A creditor is anyone with a claim, including a judgment. Conn. Gen. Stat. § 52-552b(3-4). In this instance, the plaintiff obtained a verdict against the defendant's husband and is, therefore, creditor. A debtor is an individual liable for a claim. Id. at § 52-552b(5). Plaintiff's verdict was against Daniel Greer and, therefore, Mr. Greer is a debtor under CUFTA.

Under CUFTA, a transfer includes "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset. . . ." Id. at § 52-552b(12). A transfer is:

fraudulent as to a creditor if the creditor's claim arose before the transfer was made or the obligation was incurred and if the debtor made the transfer or incurred the obligation: (1) with actual intent to hinder, delay or defraud any creditor of the debtor; or (2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor (A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor

were unreasonably small in relation to the business or transaction, or (B) intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

Id. § 52-552e(a). When determining if fraudulent intent has been proven, a court can consider: (1) if the transfer was to an insider; (2) if the debtor retained control of the property after transfer; (3) if the transfer was concealed; (4) if the debtor had been sued or threatened with a suit before the transfer; (5) if the transfer was substantially all of the debtor's assets; (6) if the debtor fled; (7) if the debtor hid assets; (8) if the debtor received consideration equal to the amount transferred; (9) if the debtor was insolvent or became insolvent as a result of the transfer; (10) if the transfer occurred shortly before the debt was incurred; and (11) if the debtor transferred essential business assets to a lienor who in turn transferred the assets to an insider of the debtor. Id. at §52-552(e)(b).

In order to prevail on his fraudulent transfer claim, the plaintiff must prove that (1) there was a transfer of an asset, (2) the creditor had a claim which arose before the transfer was made, and (3) the transfer was made with intent to hinder delay or defraud the plaintiff as creditor.

Plaintiff argues that the defendant fraudulently transferred money from joint accounts that she held with her

husband (the debtor) after judgment was entered against her husband in order to prevent the plaintiff from collecting the judgment. (Dkt. #37). Based on the evidence, the Court finds that there is probable cause that the plaintiff can prove that an asset was transferred and that plaintiff's claim arose before the transfer was made.

First, the checks are transfers under the CUFTA as a mode transferring the debtor's assets. See Cadle Co. v. Jones, 3:00CV316 (WWE), 2004 WL 2049321 (D. Conn. Aug. 20, 2004).

Second, the plaintiff, a creditor, clearly had a claim which arose before the transfers were made. Under the Fraudulent Transfer Act, a "claim [arises] on the date of the injury in the underlying action." Canty v. Otto, 304 Conn. 546, 561 (2012) (alteration in original) (internal quotation and citation omitted.) At the time of the check transfers, there was a pending lawsuit against the defendant's husband. The lawsuit commenced in May of 2016, such that the defendant and her husband had actual notice that a claim had been made and that a judgment could have been rendered against the husband in the future, a fact which the defendant acknowledges in her brief. (Dkt. #34-1.). As noted earlier, the first of the three checks was drafted a week before the jury returned its verdict and the remaining two checks were drafted within a month after the

verdict.³ This evidence establishes that plaintiff's claim arose before the three transfers were made. See Canty, 304 Conn. at 561 (in a wrongful death case, the Court found that the claim arose on the date that the victim was murdered).

Third, the Court finds probable cause that the plaintiff can prove by clear and convincing evidence that the three transfers were made with fraudulent intent. Relying upon the factors enumerated in Conn. Gen. Stat § 52-552(e)(b), the plaintiff argues that he can prove fraudulent intent. More specifically, plaintiff alleges that the defendant's husband retained possession and control of the transferred funds because the funds were used to pay joint obligations of the defendant and her husband. The plaintiff also asserts that the transfers, which were concealed from the plaintiff, occurred immediately before and immediately after the verdict and judgment. Plaintiff further asserts that there was no consideration between the defendant and her husband regarding the transfers. Finally, the plaintiff notes that the defendant's husband was about to become insolvent at the time of the transfer, as a result of the

³Although the defendant testified that she could not recall if she knew about the verdict when she issued the checks in May and June of 2017, she testified that she was in court on the day the verdict was rendered so she was familiar with the numbers. (Pl.'s Ex. 3. 90:6-91:13.).

judgment. The Court agrees with the plaintiff's application of the factors set forth in Conn. Gen. Stat § 52-552(e) (b).

Here, the defendant is the wife of the debtor and clearly an insider. There is probable cause that the debtor retained control of the funds as they were used to pay down joint expenses. (Pl.'s Ex. 22.) The Court also finds that the transfers were concealed from the plaintiff. There is evidence that after her deposition, the defendant nearly depleted a bank account that she had not used for a year. (Id.; Pl.'s Ex. 23.)

Further, the check transfers occurred around the time of the jury verdict and judgment. Ten days after the judgment, the transfers were deposited into an out of state account solely bearing the defendant's name. Not only did the check transfers occur at this time, but defendant removed herself as a signatory on an account that she had held jointly with her husband for years.

The debtor (defendant's husband) did not receive any consideration for the money that was transferred. Instead, the defendant testified that she had wanted "[t]o take the money from our joint account that belongs to me and take it out." (Pl.'s Ex. 3 81:2-3). In this respect, the defendant claims that the money in the joint account belonged to her. However, the financial activity between August 2013 and July 2017 seems to contradict defendant's assertion. Almost all of the money

deposited (and, in fact, withdrawn) from the joint account with Liberty Bank was in the debtor-husband's name. (Pl.'s Ex. 8). Of the eleven withdrawals or transfers made from the joint bank account between August 2013 and July 2017, ten were made directly to defendant's husband. (Id.) The remaining withdrawal was for \$220,000 to the defendant. (Id.) Similarly, every single check that was deposited into the Liberty account was payable solely to the defendant's husband. (Id.) Based on this evidence, a fact finder could reasonably conclude that, contrary to defendant's testimony, the money in the account did not belong to the defendant, such that consideration was owed to the debtor-husband. The defendant has offered no evidence of any such consideration.

The defendant argues that, as a joint owner of the account, she has a right to remove funds to another account and "she had the right to withdraw the funds." (Dkt. # 34-1.) However, defendant's right to withdraw the money at issue does not compel a finding that the transfers were not fraudulent. Being a joint owner does not change the probable cause analysis; all of the elements for proving fraudulent transfer are still met, regardless of whether or not the defendant's name was on the account. This fact is illustrated by the court's ruling in Cadle Co. v. Jones, 3:00CV316 (WWE), 2004 WL 2049321 (D. Conn. Aug. 20, 2004.). In Cadle, the spouse of a debtor-husband transferred

her husband's paychecks from their joint bank account to an account solely in her name. The court found clear and convincing evidence that the transfers were fraudulent. Although the spouse had a legal right to access the joint account, she did not have the right to hinder delay or defraud creditors.

II. Statute of Limitations

The defendant argues that the plaintiff's claim is barred by the applicable statute of limitations. The defendant argues that the statute of limitations for a fraudulent transfer is three years. In support of her argument, the defendant relies on the Connecticut Supreme Court's ruling in Travelers Indem. Co. v. Rubin, 209 Conn. 437 (1998) and the Connecticut Appellate Court's ruling in Valentine v. LaBow, 95 Conn. App. 436 (2006). The defendant argues that the three year statute of limitations began to run on the date that plaintiff's claim arose. Since the plaintiff filed his lawsuit against the defendant on December 18, 2018, the defendant argues that the plaintiff can only recover for claims arising within three years after December 18, 2018. The Court disagrees with the defendant's arguments.

First, Travelers and Valentine both involved fraudulent transfer claims arising under the common law.⁴ In contrast, the

⁴ In Travelers, the court stated that "[o]rdinarily, the fraudulent conveyance statute, General Statutes §52-552, would be the basis for an action to set aside a fraudulent conveyance of real property." Travelers, 209 Conn. At 440. However, the

instant claim arises under the CUFTA. Conn. Gen. Stat § 52-552j provides that the applicable statute of limitations for a CUFTA claim is "within four years after the transfer was made or the obligation was incurred..." (Emphasis added). All three of the checks were issued within four years of December 18, 2018. Thus, the Court finds that the fraudulent transfer claims were timely made.

For the reasons listed above, the Court finds that there is probable cause that the plaintiff can prove by clear and convincing evidence that the check transfers were fraudulent under the CUFTA.⁵ The Court also finds that there is probable cause that a judgment will be rendered in plaintiff's favor in the amount of \$238,000 at trial. Since the Court finds that there is probable cause that plaintiff can prove with clear and

plaintiff conceded that the action was a common law action and therefore did not implicate § 52-552 (the CUFTA). Id. Additionally, in Valentine, the court relied upon Travelers to conclude that "our Supreme Court has stated that the three year limitation period contained in §52-577 applies to common-law fraudulent conveyance actions." Valentine, 95 Conn. App. At 445.

⁵ Plaintiff advances several theories regarding the check transfers, but the Court only needs to accept one theory to conclude that the plaintiff has met his burden of proof. Since the Court has determined that the plaintiff has established probable cause that he can prove by clear and convincing evidence that the check transfers were fraudulent and since the three checks total \$238,000, the amount of the remedy sought, the Court will make no determination and will express no opinion on the merits of plaintiff's other theories or claims.

convincing evidence that the transfers were fraudulent, the Court also holds that there is probable cause plaintiff will receive the value of those checks, which is \$238,000.

For the reasons articulated above, Plaintiff has established probable cause to support a prejudgment remedy in the amount of \$238,000.

III. Plaintiff's Motion for Disclosure of Property

Because the Court has found probable cause for a prejudgment remedy, it is also appropriate to grant the motion for disclosure of assets. To this end, the Court adopts Exhibit A, a draft order prepared by the plaintiff's outlining the form and terms of disclosure.

CONCLUSION

For the foregoing reasons, Plaintiff's motion for prejudgment remedy (Dkt. #22) is GRANTED in the amount of \$238,000.00 and the amended motion to disclose property (Dkt. #25) is GRANTED.

This is not a recommended ruling. It is and has been the rule in this district that an application for a prejudgment remedy is considered non-dispositive. See Lafarge Building Materials, Inc. v. A. Aiudi & Sons, LLC, No. 3:15CV1203(JBA), 2015 WL 6551796, at *8 n.19 (D. Conn. Oct. 29, 2015) (listing cases). Therefore, this ruling is reviewable pursuant to the "clearly erroneous" statutory standard of review. 28 U.S.C. §

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIYAHU MIRLIS

Plaintiff,

v.

SARAH GREER

Defendant.

No. 3:18-cv-2082 (MPS)

**RULING ON DEFENDANT'S APPEAL AND OBJECTION TO MAGISTRATE JUDGE
RICHARDSON'S RULING ON PLAINTIFF'S APPLICATION FOR PREJUDGMENT
REMEDY AND MOTION FOR DISCLOSURE**

Having reviewed Magistrate Judge Richardson's Ruling on Plaintiff's Application for Prejudgment Remedy and Motion for Disclosure (the "Ruling"), ECF No. 61, the Defendant's Objection to the Ruling, ECF No. 66, as well as the Plaintiff's Response, ECF No. 68, I OVERRULE the objection, as I find nothing in the ruling that is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A). The objection makes four points, each of which I address below.

First, the objection points out that the Defendant was a joint owner of the bank account from which the funds were removed. As the Ruling notes, however, this is irrelevant. Indeed, many of the transfers proscribed by Connecticut's Uniform Fraudulent Transfer Act ("CUFTA") are likely to be initiated by owners, joint owners, and others with control over the property. Although the Defendant had a legal right to access and remove the property - just as any owner does - that right is limited by CUFTA and, specifically, by the statute's prohibition against transfers made with actual intent to hinder, delay or defraud a creditor of the debtor. As long as the terms of the statute are satisfied - and the Ruling demonstrates that there is probable cause to believe they are - the fact that the Defendant, here the transferee, was a joint owner of the property when the transfer was made does not matter. Nor does it matter whether the Defendant

participated in the fraud, as the Objection incorrectly asserts, although her sworn admissions during the deposition set forth in Plaintiff's Response support a finding of probable cause that she did so. *See, e.g.*, S. Greer Depo. at 80-81 (defendant testifying that she removed funds because she "did not want it taken"). Nothing in the statute suggests that it proscribes only those fraudulent transfers in which both transferor AND transferee harbored fraudulent intent, and adopting such an argument would sap the statute of much of its force, allowing, for example, a deadbeat debtor to shield his assets by placing them in the names of minors, incompetents, or other unknowing transferees.¹

Second, the objection states that "[n]o evidence was offered which would show that the transfer rendered Daniel Greer incapable of paying his debts or that the transfer of funds was made with a fraudulent intent." ECF No. 66-1 at 1. The latter statement ignores the evidence, which is summarized on pages 8-10 of the Ruling and which includes several badges of fraud. ECF No. 61 at 8-10. The former statement is incorrect: as detailed in Plaintiff's Response, it is apparent from Mr. Greer's paltry contribution towards the judgment in the underlying case and the minimal liquid assets with which he has left himself, that the transfers of liquid assets described in the Ruling have rendered him unable to contribute further to the judgment against him in the underlying case. ECF No. 71 at 2-3. In any event, the debtor's becoming insolvent as a result of the transfers is only one of several badges of fraud listed in the statute that a court may consider; it is not a prerequisite for a finding of fraudulent intent, and as the Ruling makes clear, there is ample other evidence of fraudulent intent here.

¹ The two cases Defendant cites to argue that a finding that the grantee participated in the fraud is required -- *Zapolsky v. Sachs*, 191 Conn. 194 (1983) and *Denison Development Co. v. Gunther*, 189 Conn. 333 (1983) -- predate the adoption of CUFTA.

Third, the Defendant argues this was not a “transfer,” because the Defendant was “moving her own assets, not receiving a transfer of her husband’s assets.” ECF No. 66 -1 at 3. As the Ruling demonstrates, however, the funds in the account almost all resulted from payments made to the Defendant’s husband, the debtor, and previous account activity demonstrates that, until the transfers at issue were made, the debtor had made almost all the withdrawals from the account. ECF No. 61. at 9-10. Thus, the notion that these were the Defendant’s “own assets” as an equitable matter is not supported by the evidence summarized in the Ruling. And as a legal matter, a change from joint ownership of the funds to sole ownership of the funds — one that conveniently placed the funds beyond the reach of the Defendant’s husband’s creditors — easily qualifies as a “transfer” within the broad definition set forth in the statute.²

Fourth, the Defendant makes an argument about the statute of limitations, although this argument is somewhat unclear. At one point, she appears to suggest that the statute of limitations turns on when the funds were deposited into the joint account, ECF No. 66-1 at 3, which is incorrect; the statute runs from the date the transfers were made, Conn. Gen. Stat. 52-552j. In any event, the lawsuit was plainly timely, as shown in the Plaintiff’s Response.

² The Defendant also asserts that “Daniel Greer did not participate in his wife’s seizing her funds,” ECF No. 66-1 at 3, but this assertion is not supported by the evidence summarized in the Ruling, which shows there is probable cause to believe that (1) the monies she withdrew resulted from checks payable to him, ECF No. 61 at 10 (“every single check that was deposited into the Liberty account was payable solely to the defendant’s husband”); (2) he had made all withdrawals from the account before the transfers challenged in this action, *id.*; and (3) she used the funds to pay joint expenses of her and her husband after she withdrew them, *id.* at 9. A reasonable fact-finder could infer from this evidence that, although Daniel Greer’s signature did not appear on the relevant checks and withdrawal paperwork, he did indeed participate in the transfers, which were ultimately for his benefit.

Because I find nothing clearly erroneous or contrary to law in any portion of the Ruling granting the motion for prejudgment remedy, I make the same finding with respect to the amended motion for disclosure of property.

IT IS SO ORDERED.

/s/
Michael P. Shea, U.S.D.J.

Dated: Hartford, Connecticut
September 3, 2019

EXHIBIT C

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Eliyahu Mirlis

(b) County of Residence of First Listed Plaintiff Middlesex, NJ (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Matthew K. Beatman, Eric Henzy, and John L. Cesaroni, Zeisler & Zeisler, P.C., 10 Middle Street, 15th Floor, Bridgeport, CT 06604, (203) 368-4234

DEFENDANTS

Edgewood Elm Housing, Inc., F.O.H., Inc., Edgewood Village, Inc., Edgewood Corners, Inc., and Yedidei Hagan, Inc.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1 Incorporated or Principal Place of Business In This State
2 2 Incorporated and Principal Place of Business In Another State
3 3 Foreign Nation
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332(a)(1)

Brief description of cause:

Piercing/reverse-piercing the corporate veil

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 21,955,740.27

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Hon. Michael P. Shea

DOCKET NUMBER 3:16-cv-00678

DATE 05/08/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Matthew K. Beatman

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

ELIYAHU MIRLIS,

Plaintiff,

Case No. _____

v.

EDGEWOOD ELM HOUSING, INC.,
F.O.H., INC., EDGEWOOD VILLAGE,
INC., EDGEWOOD CORNERS, INC.,
AND YEDIDEI HAGAN, INC.

Defendants.

COMPLAINT

The Plaintiff, Eliyahu Mirlis (“Plaintiff”), for his complaint against Edgewood Elm Housing, Inc. (“Edgewood Elm”), F.O.H., Inc. (“FOH”), Edgewood Village, Inc. (“Edgewood Village”), Edgewood Corners, Inc. (“Edgewood Corners”), and Yedidei Hagan, Inc. (“YH” and collectively with Edgewood Elm, FOH, Edgewood Village, and Edgewood Corners, “Defendants”), alleges as follows:

PRELIMINARY STATEMENT

1. By this action, the Plaintiff seeks to hold Defendants liable for the judgment that Plaintiff obtained against Daniel Greer (“D. Greer”) and the Yeshiva of New Haven, Inc. (the “Yeshiva”), in the action captioned *Eliyahu Mirlis v. Daniel Greer et al.*, 3:16-cv-00678 (MPS) (the “Underlying Action”). In his Third Amended Complaint filed in the Underlying Action, the Plaintiff alleged that D. Greer had sexually abused, exploited and assaulted him for a period of some three years while he was a boarding student at the Yeshiva (the “Abuse”). On or about May 18, 2017, the jury in Underlying Action returned its verdict against D. Greer and the Yeshiva, finding that Plaintiff had proven each of the causes of action alleged against them in the Third Amended Complaint. The jury awarded Plaintiff \$15,000,000 in compensatory damages and

found that Plaintiff was entitled to punitive damages from both D. Greer and the Yeshiva. On June 6, 2017, the Court in the Underlying Action entered a judgment against D. Greer and the Yeshiva in the total amount of \$21,749,041.10, including \$5,000,000.00 in punitive damages and \$1,749,041.10 in offer-of-compromise interest (the "Judgment"). The Judgment remains almost completely unsatisfied, and the outstanding amount of the Judgment has increased on account of accruing post-judgment interest.

2. D. Greer completely dominated and controlled Defendants, which at all relevant times together with D. Greer and the Yeshiva operated as a single enterprise (collectively, D. Greer, the Yeshiva and Defendants are referred to hereinafter as the "Enterprise"). Defendants never truly had any separate existence apart or independence from D. Greer and the Yeshiva. D. Greer used his complete control over Defendants to perpetrate some of the Abuse against the Plaintiff. Among other things, D. Greer repeatedly abused the Plaintiff on property owned by Defendants, i.e., he used his control over Defendants in order to use Defendants' property as locations to abuse the Plaintiff. Defendants never protested or put a stop to this use of their property, as Defendants had no minds of their own and were completely controlled by D. Greer.

3. In addition to D. Greer's unrestrained use of the Debtors' property to abuse the Plaintiff, D. Greer's domination and control over Defendants at all relevant times is further evidenced by, among other things, a complete absence of corporate formalities in the governance of Defendants; the commingling of funds and services between Defendants and D. Greer and the Yeshiva; completely overlapping officers, directors and personnel; the lack of business discretion exercised by any of Defendants; and the failure of D. Greer and the Yeshiva to deal with Defendants at arms-length.

4. D. Greer has used this Enterprise to hold assets in Defendants' hands, in the form of money and property, for the benefit of himself, his wife, Sarah Greer ("S. Greer"), and the Yeshiva so that the Yeshiva and D. Greer do not hold any significant assets but Defendants are able to provide funds to the Yeshiva and D. Greer to use at their discretion. This is accomplished by Edgewood Village, Edgewood Corners, and FOH funneling their income from, *inter alia*, collecting rent on residential properties they own, to Edgewood Elm and YH, both of whom hold substantial liquid and other assets. Then, YH transfers funds in incremental amounts to the Yeshiva at the direction of D. Greer, to, among other things, fund its programs and pay a salary and retirement benefits to S. Greer. Edgewood Elm transfers money to D. Greer in the form of salary and retirement benefits as well as to the employees of Edgewood Elm, who are technically paid by that entity, but who also perform services interchangeably for all Defendants and the Yeshiva.

5. Based on the foregoing, the Plaintiff seeks to pierce the corporate veil of Defendants in order to hold Defendants liable for the Judgment. Adherence to the fiction of separate identity in the facts and circumstances would serve only to defeat justice and equity, in that D. Greer uses Defendants asserted separate existence to shield himself and the Yeshiva from Plaintiff's efforts to collect on the Judgment. Thus, the Enterprise solely controlled by D. Greer, operates for the purpose of hindering, delaying, and frustrating the collection of Plaintiff's Judgment, while at the same time D. Greer and the Yeshiva are benefitted.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1) based on diversity of citizenship as the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and Plaintiff and Defendants are citizens of different states.

7. Venue of this action in the District of Connecticut is proper pursuant to 28 U.S.C. § 1391(b)(1) and (2) because Defendants reside in this district and a substantial amount of the events or omissions giving rise to this claim occurred in this district.

PARTIES AND KEY NONPARTIES

8. Plaintiff is an individual who resides in and is a citizen of the State of New Jersey.

9. Edgewood Elm is a non-stock corporation incorporated in the State of Connecticut with its principle place of business in New Haven, Connecticut.

10. FOH is registered as a non-stock corporation incorporated under the laws of the State of Connecticut with its principle place of business in New Haven, Connecticut. FOH owns residential properties in New Haven, Connecticut, and derives majority of its income from renting the such properties to tenants.

11. Edgewood Village is registered as a non-stock corporation incorporated under the laws of the State of Connecticut with its principle place of business in New Haven, Connecticut. Edgewood Village owns residential properties in New Haven, Connecticut, and derives majority of its income from renting the such properties to tenants.

12. Edgewood Corners is registered as a non-stock corporation incorporated under the laws of the State of Connecticut with its principle place of business in New Haven, Connecticut. Edgewood Corners owns residential properties in New Haven, Connecticut, and derives majority of its income from renting the such properties to tenants.

13. Yedidei Hagan is registered as a non-stock corporation incorporated under the laws of the State of Connecticut with its principle place of business in New Haven, Connecticut.

14. Nonparty the Yeshiva is a non-stock corporation incorporated under the laws of the State of Connecticut with its principle place of business in New Haven, Connecticut.

15. Nonparty D. Greer is an individual who resides in and is a citizen of the State of Connecticut.

16. Nonparty S. Greer is an individual who resides in and is a citizen of the State of Connecticut. S. Greer is the wife of D. Greer, and they have been married since 1971.

17. S. Greer and D. Greer currently live together as husband and wife and are not estranged from each other.

FACTS COMMON TO ALL COUNTS

18. Plaintiff commenced the Underlying Action in the United States District Court for the District of Connecticut against D. Greer and the Yeshiva on May 3, 2016.

19. Plaintiff alleged in his original Complaint, and ultimately in his Third Amended Complaint (the "Third Amended Complaint"), *inter alia*, that beginning in 2002, when Plaintiff was between the ages of fifteen (15) and seventeen (17) years old and a student at the Yeshiva, D. Greer repeatedly and continuously sexually abused, exploited, and assaulted him; that during the years prior to his sexual molestation of the Plaintiff, D. Greer sexually abused, molested and exploited at least one other minor boy in the custody and care of the Yeshiva; that D. Greer forced the Plaintiff to engage in sex acts with him, including forced fellatio, anal sex, fondling and masturbation; that D. Greer frequently gave the Plaintiff alcohol at the time D. Greer raped and assaulted the Plaintiff; that D. Greer showed the Plaintiff pornographic films; and that D. Greer anally raped, sodomized and in other ways sexually assaulted, abused and molested the Plaintiff dozens and dozens of times, with each incident lasting on average from one to four hours and sometimes all night.

20. D. Greer raped, sodomized and sexually assaulted the Plaintiff at, among other places, rental properties owned by Edgewood Elm, Edgewood Village and FOH. Specifically, D.

Greer raped, sodomized and sexually assaulted the Plaintiff at properties located at 77 Elm Street, 203, 209 and 211 Norton Street, 139 West Park Avenue, 439 Edgewood Avenue, and 193 Maple Street.

21. As described herein, at all relevant times Defendants and the Yeshiva exhibited a complete lack of corporate formalities; Defendants' funds were taken from Defendants for the personal and other use of D. Greer and S. Greer; Defendants and the Yeshiva had overlapping ownership, officers, directors, and personnel; Defendants and the Yeshiva used common office space, addresses, and phones; Defendants and the Yeshiva exercised no independent business discretion; D. Greer did not deal with Defendants and the Yeshiva at arm's length; Defendants and the Yeshiva were not treated as independent profit centers; Defendants and the Yeshiva paid each other's debts; and Defendants and the Yeshiva used each other's property as if it was their own.

22. At all relevant times herein, D. Greer was the president, a director, and in complete control of all Defendants and the Yeshiva.

23. Edgewood Elm, Edgewood Village, and FOH knew that D. Greer was using their properties to abuse the Plaintiff, because they are imputed with the knowledge of D. Greer, their president, director and person in complete control.

24. Rather than prevent their property from being used by D. Greer to perpetrate his abuse against the Plaintiff as a property owner dealing with a third party on a normal basis would, because of D. Greer's complete control over them, Edgewood Elm, Edgewood Village and FOH never took any action to prevent D. Greer from sexually abusing the Plaintiff on their properties and affirmatively allowed D. Greer to use their properties to perpetrate his abuse against the Plaintiff.

25. At all relevant times herein, S. Greer was an officer and a director of the Yeshiva and all Defendants.

26. At all relevant times, all non-routine decisions about the management of the Yeshiva and Defendants, including without limitation decisions to acquire or transfer property of the Yeshiva and Defendants, were made by D. Greer.

27. At all relevant times, D. Greer made such decisions on behalf of the Yeshiva and Defendants without holding formal board meetings or obtaining a vote from the board of directors of any of Defendants or the Yeshiva.

28. At all relevant times, the boards of directors of the Yeshiva and Defendants did not have formal meetings or keep minutes.

29. On June 5, 2018, D. Greer, both individually and as a representative of the Yeshiva, was deposed by Plaintiff in connection with the Judgment. During that deposition, Plaintiff's counsel inquired as to certain information regarding Defendants, including but not limited to:

- a. property owned by Defendants;
- b. officers, directors, and employees of Defendants;
- c. who signs checks, including paychecks, for Defendants;
- d. transactions between Defendants and the Yeshiva;
- e. individuals who provide services to Defendants;
- f. who hires, fires, and manages employees of Defendants;
- g. the frequency of meetings of the boards of directors of Defendants and whether minutes were created;
- h. whether Defendants made or received transfers;
- i. whether debts were owed to or by Defendants;

- j. leasing and management of Defendants' real property;
- k. the extent to which D. Greer, S. Greer, and employees perform work for each of Defendants;
- l. professionals employed by Defendants; and
- m. the source of Defendants' funds.

30. On or about June 14, 2018, just over a week after he was deposed, D. Greer filed documents with the Connecticut Secretary of State changing certain directors of Edgewood Village, Edgewood Elm, and FOH. In addition, certain directors were added to Edgewood Corners. Upon information and belief, D. Greer and S. Greer maintained their positions as officers and directors of these entities despite the changes.

31. Upon information and belief, D. Greer caused directors of certain of Defendants to be added or replaced in an effort to disguise the interrelated nature of the Yeshiva and Defendants and the Enterprise despite the fact that he maintained management and control over them.

32. At all relevant times, D. Greer had authority to unilaterally divest Edgewood Village and FOH of assets, without a vote from their respective boards of directors.

33. At all relevant times, D. Greer solely directed the transfer of assets among Defendants and from Defendants to himself, the Yeshiva, and S. Greer.

34. While S. Greer is a joint signatory with D. Greer on the bank accounts held by the Yeshiva and Defendants, she allegedly is not responsible for the management and control of the Yeshiva and Defendants.

35. S. Greer is employed by the Yeshiva and has been employed by the Yeshiva for at least the past ten (10) years, and she has received and continues to receive a regular salary from the Yeshiva. S. Greer has been the sole employee of the Yeshiva since sometime in 2016.

36. During the time that she has been employed by the Yeshiva, S. Greer has received retirement benefits from the Yeshiva in an amount nearly equal to her salary. S. Greer does not receive compensation directly from any of Defendants.

37. At all relevant times, D. Greer was employed by Edgewood Elm and receives a regular salary as well as retirement benefits from it.

38. Despite only being paid by a particular entity, D. Greer and S. Greer perform services for each Defendant and the Yeshiva.

39. Employees for Edgewood Elm, including its bookkeeper, secretary, and maintenance staff, perform services for each Defendant and the Yeshiva.

40. Apart from Edgewood Elm and upon information and belief, the other Defendants have no employees and all necessary services for said entities are performed by the employees of Edgewood Elm, D. Greer, and/or S. Greer.

41. D. Greer manages the employees of Edgewood Elm, and upon information and belief, has the sole authority to hire and fire such employees.

42. The secretary employed by Edgewood Elm also does work for Greer, the Yeshiva, and Defendants, and she has an office at the Yeshiva where she may be reached at the Yeshiva's number.

43. The bookkeeper, who performs services for the Yeshiva and Defendants and is employed by Edgewood Elm, has an office at a building owned by Edgewood Corners.

44. Edgewood Elm does not pay Edgewood Corners rent for the use of said office space.

45. Routine bills of the Yeshiva and Defendants are handled by the secretary and bookkeeper employed by Edgewood Elm.

46. Employees of Edgewood Elm also perform cleaning services for the Yeshiva.

47. D. Greer has two offices, one at a property owned by Edgewood Corners and another at the Yeshiva that he shares with S. Greer. Edgewood Elm does not pay for the use of the offices in the property owned by Edgewood Corners or the property owned by the Yeshiva.

48. The Yeshiva and Defendants have the same accountant, and D. Greer manages and controls the employment of and interaction with the accountant on their behalf.

49. The Yeshiva and Defendants share offices, Post Office boxes, and telephone numbers.

50. The Yeshiva and Defendants do not reimburse each other for the use of each other's services or property.

51. The other Defendants do not pay a fee to Edgewood Elm for the property management services it provides to them.

52. Religious services for YH are held at the Yeshiva, and YH does not pay for the use of the facilities.

53. Of the approximately forty-eight properties owned by Defendants, approximately twenty-one were acquired between 2002 and 2014, at a time when Defendants and the Yeshiva were aware that D. Greer had abused the Plaintiff and that the Plaintiff had claims against D. Greer, as the knowledge of D. Greer is imputed to them because D. Greer was at all relevant times their president, director and person in control.

54. After using funds derived from renting their properties and any other income for, among other things, paying the expenses for the properties, Edgewood Corners, Edgewood Village and FOH (collectively, the "Upstream Entities") transfer the bulk of their remaining funds to YH and Edgewood Elm (together, the "Downstream Entities") at the sole direction of D. Greer.

55. The Upstream Entities acquired a significant number of the Properties in 2002 or later, and specifically:

- a. Edgewood Village acquired twelve of the twenty-three Properties that it owns between 2002 and 2014; and
- b. FOH acquired eight of the seventeen Properties that it owns between 2002 and 2013.

56. In addition, upon information and belief, Edgewood Village acquired 784 Elm Street, New Haven, Connecticut ("784 Elm") for the sum of \$95,000.00 in 2014, which was owned at the time of transfer by D. Greer, Harold Hack, and Edgewood Village. Upon further information and belief, 784 Elm was acquired by Edgewood Village for less than reasonably equivalent value.

57. The Downstream Entities are used in order to hold funds received from the Upstream Entities, which are then distributed to the Yeshiva, D. Greer, and S. Greer in incremental amounts.

58. Edgewood Elm maintains a substantial amount of cash and other liquid assets. It held approximately \$800,000.00 in liquid assets as of the end of 2016, and upon information and belief continues to hold substantial amounts of cash or other liquid assets.

59. YH distributes funds to the Yeshiva or on the Yeshiva's behalf as directed solely by D. Greer.

60. YH maintains significant assets, including cash or other liquid assets. It held approximately \$100,000.00 in liquid assets as of the end of 2016, and upon information and belief, continues to hold substantial amounts of cash or other liquid assets.

61. The Yeshiva uses funds that it receives, *inter alia*, to pay S. Greer and fund her retirement account (the "Retirement Account"). (Transfers from the Yeshiva to the Retirement Account are referred to herein as the "Retirement Account Transfers.")

62. S. Greer does not oversee or manage the Retirement Account or the Retirement Account Transfers or even review statements.

63. Upon information and belief, D. Greer oversees and manages the Retirement Account, including but not limited to monitoring statements and directing the Retirement Account Transfers.

64. Upon information and belief, the Yeshiva and/or D. Greer, as the person in control of the Yeshiva and Defendants, orchestrated the payment of the Retirement Account Transfers to Defendant and the payment of a salary only to Defendant for the benefit of Defendant and D. Greer, while paying no such benefits to D. Greer, for the purpose of transferring assets from the Yeshiva and D. Greer to S. Greer to hinder Plaintiff's collection of his Judgment against the Yeshiva and D. Greer.

65. In addition, for several years and upon information and belief since at least 2002, money earned by S. Greer from the Yeshiva was saved and not used, and money earned or received by D. Greer was used to pay the expenses and make charitable contributions of both D. Greer and S. Greer.

66. As a result, D. Greer disposed of his funds to pay bills and expenses, the purpose of which was to denude D. Greer and the Yeshiva of assets while allowing S. Greer to retain assets so that D. Greer and the Yeshiva could avoid paying their creditors, including Plaintiff.

67. Upon information and belief, the Upstream Entities acquired properties from 2002 and after at the direction of D. Greer for the purpose of generating additional income for the

Upstream Entities, which income would then be held by the Downstream Entities to be distributed at D. Greer's instruction to the Yeshiva, D. Greer, and S. Greer.

68. Upon information and belief, the purpose of using the Upstream Entities to acquire and hold the Properties and the Downstream Entities to hold assets for the benefit of the Yeshiva, D. Greer, and S. Greer is to allow D. Greer and the Yeshiva to hinder, delay, and defraud their creditors in that, without limitation, the Downstream Entities are used to hold and shield from collection assets that are held for the Yeshiva, D. Greer, and S. Greer, while at the same time allowing D. Greer and the Yeshiva to receive funds to use in their discretion without exposing the vast majority of the funds to the collection activities of creditors, including Plaintiff.

First Claim for Relief As To All Defendants (Piercing the Corporate Veil – Identity Theory)

69. Paragraphs 1 through 68 are repeated and realleged as if fully set forth herein.

70. At all relevant times, there was such a unity of interest and ownership among the Yeshiva and Defendants that their independence had in effect ceased or had never begun..

71. Adhering to the fiction that Defendants had or have separate identities would only serve to defeat justice and equity by permitting Defendants to escape liability for the Judgment, which arose out of an operation conducted by all Defendants for the benefit primarily of the Yeshiva, D. Greer and S. Greer, and conduct for which all of Defendants should bear responsibility due to their knowledge of the conduct and failure to stop it.

72. At all relevant times, Defendants were operated under the complete control of D. Greer to shield the Yeshiva and D. Greer from their creditors, including Plaintiff, as part of D. Greer and the Yeshiva's efforts to hinder, delay, and defraud their creditors, including Plaintiff.

73. Defendants have been so controlled and dominated by D. Greer that justice requires liability to be imposed on them.

74. Piercing the corporate veil of Defendants to hold them liable for the Judgment will not cause harm to innocent third parties, and therefore is fair and equitable.

75. This Court should pierce the veil of the Enterprise and hold each of Defendants liable for the Judgment.

Second Claim for Relief As To All Defendants (Reverse-Piecing the Corporate Veil – Instrumentality Theory)

76. Paragraphs 1 through 75 are repeated and realleged as if fully set forth herein.

77. At all relevant times, D. Greer exercised complete domination over the finances, policies and business practices of Defendants so that Defendants had no separate mind, will, or existence of their own.

78. D. Greer used such control to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, and/or a dishonest or unjust act in contravention of Plaintiff's rights in that with full knowledge of Defendants D. Greer used Defendants' property to perpetrate his abuse against the Plaintiff and to shield assets from Plaintiff while providing an income stream to himself, the Yeshiya and S. Greer.

79. D. Greer's control of Defendants proximately caused the Plaintiff's injuries, in that D. Greer was able to use Defendants' property without restraint in perpetrating his abuse against the Plaintiff and was able to shield property available to D. Greer from being available for collection of the Judgment.

80. Defendants have been so controlled and dominated by D. Greer that justice requires liability to be imposed on them.

81. Reverse-piercing the corporate veil of Defendants to hold them liable for the Judgment will not cause harm to innocent third parties, and therefore is fair and equitable.

82. This Court should reverse-pierce the veil of the Enterprise and hold each of Defendants liable for the Judgment.

WHEREFORE, the plaintiff, Eliyahu Mirlis, respectfully requests that this Court enter the following relief in his favor and against Defendants as follows:

- a. Entry of an Order piercing the veil of the Enterprise and holding Edgewood Elm, Edgewood Village, Edgewood Corners, FOH, and YH liable for the Judgment;
- b. Entry of an Order reverse-piercing the veil as to D. Greer and holding Edgewood Elm, Edgewood Village, Edgewood Corners, FOH, and YH liable for the Judgment;
- c. Reasonable attorneys' fees;
- d. Pre-judgment interest;
- e. Costs; and
- f. Such other and further relief as the Court deems just and proper.

Dated at Bridgeport, Connecticut, this 8th day of May, 2019.

THE PLAINTIFF,
ELIYAHU MIRLIS

By: /s/ Matthew K. Beatman
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Eric Henzy (ct12849)
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EXHIBIT D

A.C. 44016
NNH-CV17-6072389-S

: APPELLATE COURT

ELIYAHU MIRLIS

v.

: JULY 23, 2020

YESHIVA OF NEW HAVEN, INC.
FKA THE GAN, INC. FKA THE GAN
SCHOOL, TIKVAH HIGH SCHOOL AND
YESHIVA OF NEW HAVEN, INC.

STIPULATION RE: MOTION TO TERMINATE STAY

The parties to this matter, the plaintiff/appellee, Eliyahu Mirlis ("Plaintiff"), and the defendant/appellant, Yeshiva of New Haven, Inc. f/k/a the Gan, Inc. f/k/a the Gan School, Tikvah High School and Yeshiva of New Haven, Inc. ("Defendant" and together with Plaintiff, the "Parties"), hereby stipulate and agree as follows:

- A. Plaintiff served upon Defendant and Daniel Greer ("D. Greer") *Third Set of Requests for Production of Documents* ("Document Requests") in the civil action *Mirlis v. Greer et al.*, Case No. 3:16-cv-00678 (MPS) (the "Underlying Action"), in the United States District Court for the District of Connecticut;
- B. Based on a dispute between the parties in the Underlying Action concerning the scope of discovery materials that may be publicly filed in any Court, Plaintiff, on the one hand, and Defendant and D. Greer, on the other, entered into their *Agreement and Stipulation Re: Defendants' Responses and Objections to Plaintiff Eliyahu Mirlis' Third Set of Requests for Production of Documents* (the "Production Stipulation"), which was "so ordered" by the District Court on July 15, 2020;
- C. Defendant and D. Greer produced documents in response to the Document Requests on July 14, 2020, which included, *inter alia*, Defendant's bank statements;

- D. Pursuant to the terms of the Production Stipulation, Plaintiff's counsel enquired of Defendant's counsel as to whether Defendant would agree to the filing of a page from Defendant's bank statements being filed on the public docket as an exhibit to Plaintiff's Motion to Terminate the Appellate Stay as Plaintiff does not believe that there is a basis to seal the same;
- E. Defendant's counsel did not agree that such document should be publicly filed on the Court's docket; and
- F. The Parties have agreed to resolve their disagreement regarding the public filing of such document by filing this stipulation.

NOW THEREFORE, the parties stipulate and agree as follows:

1. As of July 22, 2020, the balance of all funds in any account belonging to Defendant is less than \$100,000.00.

PLAINTIFF/APPELLEE
ELIYAHU MIRLIS

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YESHIVA OF NEW HAVEN, INC.

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